



San Diego City Attorney **MICHAEL J. AGUIRRE**

NEWS RELEASE

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PROTECTING THE PUBLIC INTEREST **Editorial Published in Union-Tribune Newspaper, April 2, 2007**

Protecting the Public Interest

This is a story about a symbol of corruption that stains our San Diego landscape. It is located in Kearny Mesa just to the east of Interstate 15 near Clairemont Mesa Boulevard. It is called Sunroad Centrum I and towers 190 feet high in defiance of a Federal Aviation Administration (FAA) warning to the company that it is an air navigation hazard to pilots flying in and out of Montgomery Field.

On January 19, 2007, the California Department of Transportation (Caltrans) sent a harsh letter criticizing the City for its failure to enforce the stop work notice on the building. In the letter, Caltrans states that "This issue is not about who has liability for the hazard, but taking action to remove the hazard so that liability is not an issue. When the facts of the situation show a developer failed to comply with a federal notification regulation (FAA Regulation Part 77.17), used that violation of federal regulation to obtain local planning and building approval, knowingly began construction of a building determined by a federal agency to be a hazard, constructed parts of the building in violation of State law (PUC Section 21659), and continue to defy state and local attempts to resolve the situation, the reluctance of the City to take the necessary steps to protect its citizenry is a mystery."

Who allowed this to happen? In addition to its civil lawsuit against Sunroad to force a reduction in the size of the building, the City Attorney's office has been conducting a criminal investigation into whether a former Chief of Staff to Mayor Murphy, who went to work for Sunroad violated City law that prohibits former officials from lobbying the City for one year after leaving city employment.

On the afternoon of Wednesday, March 21, 2007, at the request of the San Diego City Attorney's Office, a San Diego Superior Court judge issued a search warrant directed at evidence related to the alleged illegal lobbying by the former city official.

However, malfeasance and misfeasance by San Diego Police Chief William Lansdowne prevented the search. The search warrant was given to an assistant chief and within a few hours it was leaked to the Mayor's office. The next morning the search warrant was leaked to the *Union-Tribune* and then to officials at the company where the search was to take place. It is a misdemeanor under California Penal Code section 168 for a police officer to willfully disclose the fact of the warrant prior to execution for the purpose of preventing the search.

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With the fact of the search warrant leaked and the reluctance of the Chief to serve the warrant the City Attorney's office was forced to enter into an agreement calling for the subject of the search warrant to voluntarily turn over the documents sought by the warrant. However, once company officials became aware of the Chief's stance on the matter they gave little consideration to their agreement to voluntarily produce documents.

Under our form of government the judge, not law enforcement officials determine whether a search warrant should be issued. As the Supreme Court ruled in *U.S. v. Leon*, "it is the magistrate's responsibility to determine whether the officer's allegations establish probable cause and, if so, to issue a warrant."

What is most disturbing is that this is not the first time that Chief Lansdowne has embarrassed law enforcement. He was party to the plan to arrest Diann Shipione, the lone whistle blower who exposed the City's massive under funding of its employee pension system.

The Chief also sabotaged U.S. Attorney Carol Lam when he testified for the defense in the federal "strippergate" prosecution of three San Diego City Council members.

A July 1, 2005 *Union Tribune* editorial was very critical of the Chief's action: "Thus it was an astonishing act of betrayal of his own officers, some of whom worked undercover for many months to assist the FBI in gathering critical evidence, that Police Chief William Lansdowne made a surprise appearance in court this week to vouch for Zucchet's good character. Lansdowne's testimony, offered voluntarily on behalf of the defense, amounted to a stinging repudiation of not only his own department but also U.S. Attorney Carol Lam, who brought the charges against Zucchet before a federal grand jury.

Also commenting at the time on the Chief's testimony was Jerry Sanders, then a candidate for mayor, who said: "I see it as a huge conflict of interest. If your department initiated the investigation and has been heavily involved in it, I don't think you go over and testify for the defense voluntarily. . . . It's unfortunate for the Police Department. I think it's going to have a lasting impact."

As San Diegans we should all be troubled by this turn of events. If we are to restore the rule of law at City Hall those charged with the enforcement of the law must show by personal example their respect and commitment to abide by the law.

I rest my case.

Michael Aguirre
San Diego City Attorney

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